

No. 1818

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

THE WASHINGTON-ALASKA BANK (a Corporation),
Plaintiff in Error,

VS.

C. J. STEWART AND C. M. SHAW,
Defendants in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District
Court for the Territory of Alaska,
Fourth Division.

FILED

JUL 13 1910

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 1350.

C. J. STEWART,

Plaintiff,

vs.

WASHINGTON-ALASKA BANK (a Corpora-
tion),

Defendant.

Complaint.

For a first cause of action plaintiff alleges:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 7th day of September, 1907, defendant loaned to plaintiff the sum of \$1,300.00, and charged thereafter received and collected from plaintiff interest thereon at the rate of 2% per month.

III.

That plaintiff repaid the principal sum so borrowed as aforesaid, together with the interest as aforesaid; that said payment of principal and interest were made at divers and sundry times between September 23d, 1907, and November 14th, 1907, as follows:

The Washington-Alaska Bank vs.

Payments on Principal:	Payments for Interest Due at the Following Dates at said Rate:
Sep. 23, 1907.....\$100.00	Interest to Oct. 24, 1907....\$34.25
Oct. 8, " 350.00	Interest to Nov. 14, 1907.... 6.50
Oct. 22, " 150.00	
Oct. 19, " 150.00	
Oct. 31, " 150.00	
Nov. 14, " 400.00	
<hr/>	
Total Principal Paid.....\$1300.00	Total Interest Paid.....\$40.75

IV.

That said interest so paid was received and collected by defendant of and from plaintiff for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of section 255, 256 and 257 of Chapter 27, page 408 Carter's Code of Alaska.

And for a second cause of action plaintiff alleges:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 13th day of September, 1907, defendant loaned to plaintiff the sum of \$2,700.00 and charged and thereafter received and collected from plaintiff interest thereon at the rate of 2% per month.

III.

That plaintiff did repay the principal sum so borrowed as aforesaid, together with interest as aforesaid; that said payment of principal and interest

were made at divers and sundry times between October 29th, 1907, and May 11th, 1908, as follows:

Payments on Principal:	Payments of Interest Due at Following Dates at said Rate:
Nov. 11, 1907.....\$200.00	Nov. 14, 1907.....\$109.07
Oct. 29, " 200.00	Dec. 31, " 69.25
Dec. 10, " 200.00	May 11, " 115.00
Jan. 13, 1908..... 100.00	
Feb. 3, " 200.00	
Feb. 7, " 500.00	
Feb. 13, " 100.00	
Feb. 15, " 100.00	
Mch. 10, " 150.00	
May 8, " 100.00	
May 11, " 850.00	
<hr/>	
Total Principal Paid.....\$2700.00	Total Interest Paid.....\$293.32

IV.

That said interest so paid was received and collected by defendant of and from plaintiff for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of sections 255, 256 and 257 of Chapter 27, Page 408, Carter's Code of Alaska.

And for a third cause of action plaintiff alleges:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 13th day of September, 1907, defendant loaned to plaintiff the sum of \$5,900.00 and charged and thereafter received and collected

from plaintiff interest thereon at the rate of 2% per Alaska.

III.

That plaintiff repaid the principal sum so borrowed as aforesaid, together with interest as aforesaid; that said payment of principal and interest were made at divers and sundry times between October 13, 1907, and April 12, 1909, as follows:

Payments of Principal:	Payments of Interest Due at Following Dates at said Rate:
Apr. 10, 1908.....\$ 50.00	Oct. 13, 1907.....\$118.00
Apr. 20, " 100.00	Nov. 13, " 118.00
Apr. 22, " 250.00	Dec. 12, " 118.00
Apr. 28, " 200.00	Feb. 10, 1908..... 236.00
May 1, " 150.00	Apr. 10, " 236.00
May 7, " 75.00	July 31, " 267.84
May 13, " 42.50	Aug. 31, " 27.00
May 18, " 557.50	Sept. 30, " 27.00
May 29, " 600.00	Oct. 31, " 27.00
June 9, " 375.00	Nov. 30, " 27.00
June 10, " 250.00	Dec. 31, " 24.87
June 15, " 225.00	Jan. 30, 1909..... 14.75
June 19, " 725.00	Feb. 27, " 8.60
June 29, " 300.00	Mch. 31, " 6.00
July 3, " 100.00	Apr. 12, " 2.13
July 7, " 400.00	
July 22, " 150.00	
Dec. 21, " 350.00	
Dec. 24, " 150.00	
Jan. 8, 1909..... 150.00	
Jan. 23, " 100.00	
Feb. 13, " 300.00	
Apr. 8, " 100.00	
Apr. 12, " 200.00	
<hr/>	<hr/>
Total Principal Paid.....\$5900.00	Total Interest Paid.....\$1258.19

IV.

That said interest so paid was received and col-

lected by defendant of and from plaintiff for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of sections 255, 256 and 257 of Chapter 27, page 408 Carter's Code of Alaska.

And for a fourth cause of action plaintiff alleges:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 14th day of September, 1907, defendant loaned to plaintiff the sum of \$2,300.00 and charged thereafter received and collected from plaintiff interest thereon at the rate of 2% per month.

III.

That plaintiff repaid the principal sum so borrowed as aforesaid together with interest as aforesaid; that said payment of principal and interest were made at divers and sundry times between November 14th, 1907, and April 13th, 1908, as follows:

Payments on Principal:	Payments of Interest Due at Following Dates at said Rate:
Nov. 27, 1907.....\$500.00	Nov. 14, 1907.....\$92.00
Dec. 21, " 350.00	Nov. 29, " 22.50
Dec. 31, " 100.00	Apr. 13, 1908..... 76.50
Jan. 10, 1908..... 500.00	
Feb. 25, " 250.00	
Meh. 2, " 150.00	
Meh. 10, " 225.00	
Meh. 18, " 125.00	
Meh. 23, " 100.00	
Total Principal Paid.....\$2300.00	Total Interest Paid.....\$191.00

IV.

That said interest so paid was received and collected by defendant of and from plaintiff for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of sections 255, 256 and 257 of Chapter 27, page 408, Carter's Code of Alaska.

And for a fifth cause of action plaintiff alleges:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 2d day of July, 1909, defendant loaned plaintiff the sum of \$1,000.00 and charged and thereafter received and collected from plaintiff interest thereon at the rate of 2% per month.

III.

That plaintiff repaid the principal so borrowed as aforesaid, together with the interest as aforesaid; that said payment of principal and interest were made at divers and sundry times between July 2d, 1909, and July 9th, as follows:

Payments of Principal:	Payments of Interest Due at the
	Following Dates and at said Rate:
July 6, 1909.....\$450.00	July 9, 1909.....\$3.75
July 9, " 550.00	
Total Principal Paid.....\$1000.00	Total Interest Paid.....\$3.75

IV.

That said interest so paid was received and col-

lected by defendant of and from plaintiff for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of sections 255, 256 and 257 of Chapter 27, page 408, Carter's Code of Alaska.

And for a sixth cause of action plaintiff alleges:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 12th day of July, 1909, defendant loaned plaintiff the sum of \$3,000.00 and charged and thereafter received and collected from plaintiff interest thereon at the rate of 2% per month.

III.

That plaintiff repaid the principal sum so borrowed as aforesaid, together with interest as aforesaid; that said payments of principal and interest were made at divers and sundry times between July 12th, 1909, and August 9th, 1909, as follows:

Payments of Principal:	Payments of Interest Due at Following Dates at said Rate:
Aug. 9, 1909.....\$3000.00	July 31, 1909.....\$38.00
	Aug. 9, " 18.00
Total Principal Paid.....\$3000.00	Total Interest Paid.....\$56.00

IV.

That said interest so paid was received and collected by defendant of and from plaintiff for the loan and use of the principal money aforesaid, and

is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of sections 255, 256 and 257 of Chapter 27, page 408, Carter's Code of Alaska.

Wherefore, plaintiff demands judgment as follows:

- (1) On the first cause of action, for that being double the amount of interest paid as set out in said cause of action.....\$ 81.50
- (2) On the second cause of action, for that being double the amount of interest paid as set out in said cause of action..... 586.64
- (3) On the third cause of action, for that being double the amount of interest paid as set out in said cause of action.. 2516.38
- (4) On the fourth cause of action, for that being double the amount of interest paid as set out in said cause of action..... 382.00
- (5) On the fifth cause of action, for that being double the amount of interest paid as set out in said cause of action..... 7.50
- (6) On the sixth cause of action, for that being double the amount of interest paid as set out in said cause of action.. 112.00

In all for the sum of.....\$3686.02

And for his costs and disbursements in this behalf incurred.

(Sgd.) R. W. JENNINGS,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

C. J. Stewart, being first duly sworn, on his oath deposes and says: That he is the plaintiff in the within entitled action; that he has read the within complaint, knows the contents thereof and the same are true, as he verily believes.

(Sgd.) C. J. STEWART.

Subscribed and sworn to before me this 22d day of September, 1909.

[Notary Seal]

(Sgd.) E. H. OSBORNE VAUDIN,
Notary Public for Alaska.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart vs. Washington Alaska Bank. Complaint. Filed in the District Court, Territory of Alaska, 4th Division, at 10:20 o'clock A. M., Sep. 22, 1909. E. H. Mack, Clerk. By Geo. F. Gates, Deputy. R. W. Jennings, Attorney for Plaintiff.

[Title of Court and Cause.]

Demurrer [to the Complaint].

Comes now the defendant and demurs to the complaint herein upon the following ground,—that several causes of action have been improperly united.

Defendant further demurs to the alleged first cause of action stated therein upon the ground that it does not state facts sufficient to constitute a cause of action and that the Court has no jurisdiction of the subject of the action.

Defendant further demurs to the alleged second cause of action stated therein upon the ground that it does not state facts sufficient to constitute a cause of action and that the Court has no jurisdiction of the subject of the action.

Defendant further demurs to the alleged third cause of action stated therein upon the ground that it does not state facts sufficient to constitute a cause of action and that the Court has no jurisdiction of the subject of the action.

Defendant further demurs to the alleged fourth cause of action stated therein upon the ground that it does not state facts sufficient to constitute a cause of action and that the Court has no jurisdiction of the subject of the action.

Defendant further demurs to the alleged fifth cause of action stated therein upon the ground that it does not state facts sufficient to constitute a cause of action and that the Court has no jurisdiction of the subject of the action.

Defendant further demurs to the alleged sixth cause of action stated therein upon the ground that it does not state facts sufficient to constitute a cause

of action and that the Court has no jurisdiction of the subject of the action.

Fairbanks, Alaska, October 22, 1909.

WICKERSHAM, HEILIG & RODEN,
H.

Attorneys for Defendant.

Service by copy of the foregoing demurrer admitted this 22d day of October, 1909.

(Sgd.) R. W. JENNINGS,
Attorney for Plaintiff.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. *C. J. Stewart vs. Washington-Alaska Bank*. Demurrer. Filed in the District Court, Territory of Alaska, 4th Division. Oct. 22, 1909, E. H. Mack, Clerk. By G. F. Gates, Deputy. Wickersham, Heilig & Roden, Attorneys for Defendant

[Title of Court and Cause.]

Order Overruling Demurrer [to the Complaint].

Now on this 2d day of November, 1909, the above-entitled cause came on to be heard on defendant's demurrer to plaintiff's complaint. A. R. Heilig appeared in support of the Demurrer and R. W. Jennings, counsel for plaintiff, in opposition thereto. After hearing the arguments of both counsel and examining citations offered, the Court being well advised:

It is ordered: That defendant's demurrer to plaintiff's complaint be and the same is hereby over-

ruled and ten days' time allowed in which to file an Answer.

THOMAS R. LYONS,
District Judge.

[Endorsements]: Entered in Court Journal 9, page 521.

[Title of Court and Cause.]

Answer.

For answer to the first cause of action set forth in the complaint herein defendant alleges: That before the commencement of this action and on or about August 7, 1909, at Fairbanks, Alaska, the plaintiff, by instrument in writing subscribed by him and on said date delivered by him to one C. M. Shaw, duly assigned the subject matter and cause of action set forth in said first cause of action to the said C. M. Shaw, who then was and has been ever since the holder thereof, and was at the time of the commencement of this action and now is the real party in interest.

For answer to the second cause of action set forth in the complaint herein defendant alleges: That before the commencement of this action and on or about August 7, 1909, at Fairbanks, Alaska, the plaintiff, by instrument in writing subscribed by him and on said date delivered by him to one C. M. Shaw, duly assigned the subject matter and cause of action set forth in said second cause of action to the said C. M. Shaw, who then was and has been ever since the holder thereof and was at the time of the commence-

ment of this action and now is the real party in interest.

For answer to the third cause of action set forth in the complaint herein defendant alleges: That before the commencement of this action and on or about August 7th, 1909, at Fairbanks, Alaska, the plaintiff, by instrument in writing subscribed by him and on said date delivered by him to one C. M. Shaw, duly assigned the subject matter and cause of action set forth in said third cause of action to the said C. M. Shaw, who then was and has been ever since the holder thereof and was at the time of the commencement of this action and now is the real party in interest.

For answer to the fourth cause of action set forth in the complaint herein defendant alleges: That before the commencement of this action and on or about August 7, 1909, at Fairbanks, Alaska, the plaintiff, by instrument in writing subscribed by him and on said date delivered by him to one C. M. Shaw, duly assigned the subject matter and cause of action set forth in said fourth cause of action to the said C. M. Shaw, who then was and has been ever since the holder thereof and was at the time of the commencement of this action and now is the real party in interest.

For answer to the fifth cause of action set forth in the complaint herein defendant alleges: That before the commencement of this action and on or about August 7, 1909, at Fairbanks, Alaska, the plaintiff, by instrument in writing subscribed by him and on said date delivered by him to one C. M. Shaw,

duly assigned the subject matter and cause of action set forth in said fifth cause of action to the said C. M. Shaw, who then was and has been ever since the holder thereof and was the time of the commencement of this action and now is the real party in interest.

For answer to the sixth cause of action set forth in the complaint herein defendant alleges; that before the commencement of this action and on or about August 7, 1909, at Fairbanks, Alaska, the plaintiff, by instrument in writing subscribed by him and on said date delivered by him to one C. M. Shaw duly assigned the subject matter and cause of action set forth in said sixth cause of action to the said C. M. Shaw, who then was and has been ever since the holder thereof and was at the time of the commencement of this action and now is the real party in interest.

Wherefore defendant prays that plaintiff take nothing by his action and that the defendant have judgment for his costs and disbursements herein.

Fairbanks, Alaska, Nov. 11, 1909.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendant.

Territory of Alaska,
Fourth Division,—ss.

Before me, the undersigned authority, personally appeared G. B. Wesch, who being first duly sworn, deposes and says: That he is the cashier of the Washington-Alaska Bank, the corporation named in the foregoing Answer as defendant; that he has read

the foregoing Answer and that he believes that allegations therein contained to be true.

GEO. B. WESCH.

Subscribed and sworn to before me this 11th day of November, 1909.

[Notary Seal.]

ALBERT R. HEILIG,

Notary Public in and for Alaska.

Service by copy of the foregoing Answer admitted this 11th day of November, 1909.

R. W. JENNINGS,

Attorney for Plaintiff.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart vs. Washington-Alaska Bank, a corporation. Answer. Filed in the District Court Territory of Alaska, 4th Division, Nov. 11, 1909. E. H. Mack, Clerk. By Geo. F. Gates, Deputy. Wickersham, Heilig & Roden, Attorney for Defendant.

[Title of Court and Cause.]

Motion and Affidavits [for the Amendment of the Complaint].

United States of America,
Territory of Alaska,
Fourth Division,—ss.

C. J. Stewart, being duly sworn, says: I am the person named as plaintiff in the above-entitled action;

On the 11th day of November, 1909, defendant herein duly filed its Answer to the Complaint in this action, and in said answer defendant alleged

that on the 7th day of August, 1909, affiant, being the plaintiff herein, duly assigned to C. M. Shaw the causes of action set out in the complaint herein, and that C. M. Shaw was, at the time of the commencement of this action and now is, the real party in interest;

Affiant alleges that it is true that on said date he assigned to said C. M. Shaw all and singular the stock in trade, warehouses of any and all character, merchandise, book accounts, bills receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description, and all books of accounts held by affiant, or to which affiant is entitled, or owing to him, and all interest in or to any of the property above mentioned, or in or to any other goods, chattels or personal property of any description belonging to affiant, or in which affiant has any right, title or interest whatever; but affiant alleges that said assignment was made to the said C. M. Shaw for the purpose of enabling him, the said C. M. Shaw, to collect the assets of affiant and to pay the debts of affiant and to pay the surplus remaining, if any, to affiant;

Affiant further alleges that he is in doubt whether or not, in law, said assignment passes to his said assignee, C. M. Shaw, the rights of action for the usury set up in the complaint, and for that reason and in order to remove the possibility that defendant may at any time be subjected to any other suits or action for or on account of the usury complained of in this action, and in so much as the said C. M.

Shaw is willing to be made a party hereto and to be concluded by this action; and because affiant desires to amend his complaint in certain other particulars as hereinafter set forth, affiant moves the Court for leave to amend the complaint herein in the following particulars:

(1) By adding the name of C. M. Shaw as a party plaintiff in this action;

(2) By adding to and making a part of paragraph IV of each cause of action set out in the complaint the following words: "And the charging, collecting and receiving of said interest was done by said defendant in the District of Alaska and with full knowledge that the same was illegal and wrongful";

(3) By adding to each cause of action set out in the complaint a paragraph to be numbered "V" and to read as follows: "That after the payments aforesaid and before the commencement of this action, said C. J. Stewart assigned to C. M. Shaw all and singular the stock in trade, warehouse of any and all character, merchandise, book accounts, bills receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description and all books of account held by the said C. J. Stewart, or to which he was entitled, or which were owing to him and all interest in or to any of the property above mentioned, or in or to any other goods, chattels, or personal property of any description belonging to said C. J. Stewart, or in which the said C. J. Stewart has any right, title or interest whatever, for the purpose of

enabling him, the said C. M. Shaw, to collect the assets and pay the debts of the said C. J. Stewart and to pay the surplus remaining, if any, to the said C. J. Stewart.”

This motion is made for the foregoing reasons and is based upon the records and files of this cause and the affidavit of C. M. Shaw hereunto attached.

C. J. STEWART.

Subscribed and sworn to before me this 12th day of November, 1909.

[Notary Seal] E. H. OSBORNE VAUDIN,
Notary Public for Alaska, Residing at Fairbanks,
Fourth Division.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

AFFIDAVIT OF C. M. SHAW.

C. M. Shaw, being first duly sworn, on oath deposes and says:

I am the same C. M. Shaw who is mentioned in the foregoing affidavit and motion of C. J. Stewart;

I have read the foregoing affidavit and motion of C. J. Stewart, plaintiff herein, know the contents thereof and believe the same to be true;

If I have any interest either as assignee as aforesaid, or otherwise, in the causes of action, or any of them, mentioned in the complaint, I am willing to be concluded by this action, and I hereby pray to be made a party to said action and to join in the said petition or motion of the said C. J. Stewart.

C. M. SHAW.

Subscribed and sworn to before me this 12th day of November, 1909.

[Notary Public]

E. H. OSBORNE VAUDIN,
Notary Public for Alaska, Residing at Fairbanks,
Fourth Division.

NOTICE.

To the Above-named Defendant, and to Messrs.
Wickersham, Heilig & Roden, Its Attorneys
Herein.

Take notice that on Saturday, November 13th, 1909, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, I will call up for determination by the above-entitled Court, the foregoing matter.

R. W. JENNINGS,
Attorneys for Plaintiff.

Copy received and service accepted.

WICKERSHAM, HEILIG & RODEN,
Attorneys for Defendant.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. *C. J. Stewart vs. Washington-Alaska Bank.* Motion and Affidavit. Filed in the District Court, Territory of Alaska, 4th Division. Nov. 12, 1909. E. H. Mack, Clerk. By G. F. Gates, Deputy. R. W. Jennings, Attorney for Plaintiff.

[Title of Court and Cause.]

Defendant's Objections to the Motion of Plaintiff to Amend the Complaint.

Defendant objects to the granting of plaintiffs' motion for leave to amend the complaint herein upon the following grounds:

1. That the manner in which plaintiff seeks to amend his complaint is contrary to law.

2. That it appears from plaintiff's affidavit that he had full knowledge of the facts set forth in his affidavit and motion at the time he filed his original complaint.

3. That it appears from the affidavit and motion that plaintiff has not and did not at the time he commenced this action have the right to bring this action.

4. That it appears from the affidavit and motion that at the time plaintiff commenced this action he was not the real party in interest.

5. That a joinder of plaintiff and C. M. Shaw as coplaintiffs in this action will deprive this defendant of a substantial defense in this action.

6. That the affidavit and motion do not establish a joint cause of action in the plaintiff and C. M. Shaw.

7. That the addition of C. M. Shaw as plaintiff would be in effect a substitution of a person having

an apparent cause of action for the plaintiff who has no cause of action.

Fairbanks, Alaska, November 17, 1909.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendant.

Service by copy of the foregoing objections admitted this 17 day of November, 1909.

R. W. JENNINGS,

Attorney for Plaintiff.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart, plaintiff, vs. Washington-Alaska Bank, a Corporation, defendant. Defendant's Objections to Motion of Plaintiff to Amend Complaint. Filed in Open Court Nov. 18, 1909. Dist. Court, Ter. Alaska, 4th Div. E. H. Mack, Clerk. By E. A. Henderson, Deputy. Wickersham, Heilig & Roden, Attorney for Defendant.

[Title of Court and Cause.]

[Order Sustaining Motion to File an Amended Complaint, etc.]

Now, on this 18th day of November, 1909, arguments having been heard on plaintiff's motion for leave to file an Amended Complaint.

It is ordered: That plaintiff's motion be sustained and that said Amended Complaint may be filed and defendant given five days in which to file his Answer.

THOMAS R. LYONS,

District Judge.

[Endorsements]: Entered in Court Journal No. 9, page 573.

[Title of Court and Cause.]

Amended Complaint Filed by Leave of the Court.

For a first cause of action plaintiffs allege:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 7th day of September, 1907, defendant loaned to plaintiff C. J. Stewart the sum of \$1300.00, and charged and thereafter received and collected from said plaintiff interest thereon at the rate of 2% per month.

III.

That said plaintiff, C. J. Stewart, repaid the principal sum so borrowed as aforesaid, together with the interest as aforesaid; that said payment of principal and interest were made at divers and sundry times between September 23d, 1907, and November 14th, 1907, as follows:

Payments on Principal:	Payments for Interest Due at the Following Dates at said Rate:
Sep. 23, 1907.....\$100.00	Interest to Oct. 24, 1907....\$34.25
Oct. 8, " 350.00	Interest to Nov. 14, 1907.... 6.50
Oct. 22, " 150.00	
Oct. 19, " 150.00	
Oct. 31, " 150.00	
Nov. 14, " 400.00	
<hr/> Total Principal Paid.....\$1300.00	<hr/> Total Interest Paid.....\$40.75

IV.

That said interest so paid was received and collected by defendant of and from said plaintiff C. J. Stewart for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of Sections 255, 256 and 257 of Chapter 27, page 408 Carter's Code of Alaska, and the charging, collecting and receiving of said interest was done by said defendant in the District of Alaska and with full knowledge that the same was illegal and wrongful.

V.

That after the payments aforesaid and before the commencement of this action, said C. J. Stewart assigned to the said C. M. Shaw all and singular the stock in trade, warehouses of any and all character, merchandise, book accounts, bills receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description and all books of account held by the said C. J. Stewart, or to which he was entitled, or which were owing to him, and all interest in or to any of the property above mentioned, or in or to any other goods, chattels or personal property of any description belonging to said C. J. Stewart, or in which the said C. J. Stewart has any right, title or interest whatever, for the purpose of enabling him, the said C. M. Shaw, to collect the assets and pay the debts of the said C. J. Stewart and to pay the surplus remaining, if any, to the said C. J. Stewart.

And for a second cause of action plaintiffs allege:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 13th day of September, 1907, defendant loaned to plaintiff C. J. Stewart the sum of \$2,700.00, and thereafter charged, collected and received from plaintiff aforesaid, interest thereon at the rate of 2% per month.

III.

That said plaintiff C. J. Stewart did repay the principal sum so borrowed as aforesaid, together with interest as aforesaid; that said payments of principal and interest were made at divers and sundry times between October 29th, 1907, and May 11th, 1908, as follows:

Payments on Principal:	Payments of Interest Due at Following Dates at said Rate:
Nov. 11, 1907.....\$200.00	Nov. 14, 1907.....\$109.07
Oct. 29, " 200.00	Dec. 31, " 69.25
Dec. 10, " 200.00	May 11, " 115.00
Jan. 13, 1908..... 100.00	
Feb. 3, " 200.00	
Feb. 7, " 500.00	
Feb. 13, " 100.00	
Feb. 15, " 100.00	
Mar. 10, " 150.00	
May 8, " 100.00	
May 11, " 850.00	
<hr/>	
Total Principal Paid.....\$2700.00	Total Interest Paid.....\$293.32

IV.

That said interest so paid was received and collected by defendant of and from said plaintiff C. J.

Stewart for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law, and the receiving and collecting thereof by said defendant was illegal and in contravention of Sections 255, 256 and 257 of Chapter 27, page 408 Carter's Code of Alaska, and the charging, collecting and receiving of said interest was done by said defendant in the District of Alaska and with full knowledge that the same was illegal and wrongful.

V.

That after the payments aforesaid and before the commencement of this action, said C. J. Stewart assigned to the said C. M. Shaw all and singular the stock in trade, warehouses of any and all character, merchandise, book accounts, bills receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description and all books of account held by the said C. J. Stewart or to which he was entitled, or which were owing to him, and all interest in or to any of the property above mentioned, or in or to any other goods, chattels or personal property of any description belonging to said C. J. Stewart or in which the said C. J. Stewart has any right, title or interest whatever, for the purpose of enabling him, the said C. M. Shaw, to collect the assets and pay the debts of the said C. J. Stewart and to pay the surplus remaining, if any, to the said C. J. Stewart.

And for a third cause of action plaintiffs allege:

I.

That defendant is and was at all times herein-after mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 13th day of September, 1907, defendant loaned to plaintiff C. J. Stewart the sum of \$5,900.00, and thereafter charged, received and collected from said plaintiff interest thereon at the rate of 2% per month.

III.

That said plaintiff C. J. Stewart repaid the principal sum so borrowed as aforesaid, together with interest as aforesaid; that said payment of principal and interest was made at divers and sundry times between October 13th, 1907, and April 12th 1909, as follows:

Payments of Principal:	Payments of Interest Due at Following Dates at said Rate:
Apr. 10, 1908.....\$ 50.00	Oct. 13, 1907.....\$118.00
Apr. 20, " 100.00	Nov. 13, " 118.00
Apr. 22, " 250.00	Dec. 12, " 118.00
Apr. 28, " 200.00	Feb. 10, 1908..... 236.00
May 1, " 150.00	Apr. 10, " 236.00
May 7, " 75.00	July 31, " 267.84
May 13, " 42.50	Aug. 31, " 27.00
May 18, " 557.50	Sept. 30, " 27.00
May 29, " 600.00	Oct. 31, " 27.00
June 9, " 375.00	Nov. 30, " 27.00
June 10, " 250.00	Dec. 31, " 24.87
June 15, " 225.00	Jan. 30, 1909..... 14.75
June 19, " 725.00	Feb. 27, " 8.60
June 29, " 300.00	Mch. 31, " 6.00
July 3, " 100.00	Apr. 12, " 2.13
July 7, " 400.00	
July 22, " 150.00	
Dec. 21, " 350.00	
Dec. 24, " 150.00	
Jan. 8, 1909..... 150.00	
Jan. 23, " 100.00	
Feb. 13, " 300.00	
Apr. 8, " 100.00	
Apr. 12, " 200.00	
<hr/> Total Principal Paid.....\$5900.00	<hr/> Total Interest Paid.....\$1258.19

IV.

That said interest so paid was received and collected by defendant of and from said plaintiff C. J. Stewart for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of Sections 255, 256 and 257 of Chapter 27, page 408, Carter's Code of Alaska, and the charging, collecting and receiving of said interest was done by said defendant in the District of Alaska, and with the full knowledge that the same was illegal and wrongful.

V.

That after the payments aforesaid and before the commencement of this action, said C. J. Stewart assigned to the said C. M. Shaw all and singular the stock in trade, warehouses of any and all character, merchandise, book accounts, bills receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description and all books of account held by the said C. J. Stewart, or to which he was entitled, or which were owing to him, and all interest in or to any of the property above mentioned, or in or to any other goods, chattels or personal property of any description belonging to said C. J. Stewart or in which the said C. J. Stewart has any right, title or interest whatever, for the purpose of enabling him, the said C. M. Shaw, to collect the assets and pay the debts of the said C. J. Stewart and to pay the surplus remaining, if any, to the said C. J. Stewart.

And for a fourth cause of action plaintiffs allege:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 14th day of September, 1907, defendant loaned to plaintiff C. J. Stewart the sum of \$2,300.00, and thereafter charged, received and collected from said plaintiff interest thereon at the rate of 2% per month.

III.

That said plaintiff C. J. Stewart repaid the principal sum so borrowed as aforesaid, together with interest as aforesaid; that said payment of principal and interest was made at divers and sundry times between November 14th, 1907, and April 13th, 1908, as follows:

Payments on Principal:	Payments of Interest Due at Following Dates at said Rate:
Nov. 27, 1907.....\$500.00	Nov. 14, 1907.....\$92.00
Dec. 21, " 350.00	Nov. 29, " 22.50
Dec. 31, " 100.00	Apr. 13, 1908..... 76.50
Jan. 10, 1908..... 500.00	
Feb. 25, " 250.00	
Mch. 2, " 150.00	
Mch. 10, " 225.00	
Mch. 18, " 125.00	
Mch. 23, " 100.00	
<hr/>	<hr/>
Total Principal Paid.....\$2300.00	Total Interest Paid.....\$191.00

IV.

That said interest so paid was received and collected by defendant of and from said plaintiff C. J. Stewart for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by

law and the receiving and collecting thereof by said defendant was illegal and in contravention of Sections 255, 256 and 257, of Chapter 27, page 408, Carter's Code of Alaska, and the charging, collecting and receiving of said interest was done by said defendant in the District of Alaska, and with full knowledge that the same was illegal and wrongful.

V.

That after the payments aforesaid and before the commencement of this action, said C. J. Stewart assigned to the said C. M. Shaw all and singular the stock in trade, warehouses of any and all character, merchandise, book accounts, bills receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description and all books of account held by the said C. J. Stewart, or to which he was entitled, or which were owing to him, and all interest in or to any of the property above mentioned, or in or to any other goods, chattels or personal property of any description belonging to said C. J. Stewart or to which the said C. J. Stewart has any right, title or interest whatever, for the purpose of enabling him, the said C. M. Shaw, to collect the assets and pay the debts of the said C. J. Stewart and to pay the surplus remaining, if any, to the said C. J. Stewart.

And for a fifth cause of action plaintiffs allege:

I.

That defendant is and was at all times herein-after mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 2d day of July, 1909, defendant loaned to plaintiff C. J. Stewart the sum of \$1,000.00, and thereafter charged, received and collected from said plaintiff interest thereon at the rate of 2% per month.

III.

That said plaintiff C. J. Stewart repaid the principal so borrowed as aforesaid, together with the interest as aforesaid; that said payment of principal and interest was made at divers and sundry times between July 2d, 1909, and July 9th, 1909, as follows:

Payments of Principal:	Payments of Interest Due at the Following Dates and at said Rate:
July 6, 1909.....\$450.00	July 9, 1909.....\$3.75
July 9, " 550.00	
Total Principal Paid.....\$1000.00	Total Interest Paid.....\$3.75

IV.

That said interest so paid was received and collected by defendant of and from plaintiff C. J. Stewart for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof, by said defendant was illegal and in contravention of Sections 255, 256 and 257 of Chapter 27, page 408, Carter's Code of Alaska, and the charging, collecting and receiving of said interest was done by said defendant in the District of Alaska, and with full knowledge that the same was illegal and wrongful.

V.

That after the payments aforesaid and before the commencement of this action, said C. J. Stewart

assigned to the said C. W. Shaw all and singular the stock in trade, warehouses of any and all character, merchandise, book accounts, bill receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description and all books of account held by the said C. J. Stewart, or to which he was entitled, or which were owing to him, and all interest in or to any of the property above mentioned, or in or to any other goods, chattels or personal property of any description belonging to said C. J. Stewart or to which the said C. J. Stewart has any right, title or interest whatever, for the purpose of enabling him, the said C. M. Shaw to collect the assets and pay the debts of the said C. J. Stewart and to pay the surplus remaining, if any, to the said C. J. Stewart.

And for the sixth cause of action plaintiff alleges:

I.

That defendant is and was at all times hereinafter mentioned a corporation duly organized, existing and doing business.

II.

That on, to wit, the 12th day of July, 1909, defendant loaned to plaintiff C. J. Stewart the sum of \$3,000.00, and thereafter charged, received and collected from said plaintiff interest thereon at the rate of 2% per month.

III.

That said plaintiff C. J. Stewart repaid the principal so borrowed as aforesaid, together with interest as aforesaid; that said payment of principal and

interest was made at divers and sundry times between July 12th, 1909, and August 9th, 1909, as follows:

Payments of Principal:	Payments of Interest Due at Fol-
	lowing Dates at said Rate:
Aug. 9, 1909.....\$3000.00	July 31, 1909.....\$38.00
	Aug. 9, " 18.00
<hr/>	<hr/>
Total Principal Paid.....\$3000.00	Total Interest Paid.....\$56.00

IV.

That said interest so paid was received and collected by defendant of and from said plaintiff C. J. Stewart for the loan and use of the principal money aforesaid, and is in excess of the amount allowed by law and the receiving and collecting thereof by said defendant was illegal and in contravention of Sections 255, 256 and 257 of Chapter 27, page 408, Carter's Code of Alaska, and the charging, collecting and receiving of said interest was done by said defendant in the District of Alaska, and with full knowledge that the same was illegal and wrongful.

V.

That after the payments aforesaid and before the commencement of this action, said C. J. Stewart assigned to the said C. M. Shaw all and singular the stock in trade, warehouses of any and all character, merchandise, book accounts, bills receivable, notes, drafts and other evidences of indebtedness and also all store fixtures and personal property of every description and all books of account held by the said C. J. Stewart or to which he was entitled, or which were owing to him, and all interest in or to any of the property above mentioned, or in or to any other goods, chattels or personal property of any description belonging to said C. J. Stewart, or to which the

said C. J. Stewart has any right, title or interest whatever, for the purpose of enabling him, the said C. M. Shaw to collect the assets and pay the debts of the said C. J. Stewart and to pay the surplus remaining, if any, to the said C. J. Stewart.

Wherefore plaintiffs demand judgment as follows:

- | | | |
|-----|--|----------|
| (1) | On the first cause of action, for that being double the amount of interest paid as set out in said cause of action..... | \$ 81.50 |
| (2) | On the second cause of action, for that being double the amount of interest paid as set out in said cause of action..... | 586.64 |
| (3) | On the third cause of action, for that being double the amount of interest paid as set out in said cause of action.. | 2516.38 |
| (4) | On the fourth cause of action, for that being double the amount of interest paid as set out in said cause of action.. | 382.00 |
| (5) | On the fifth cause of action, for that being double the amount of interest paid as set out in said cause of action.. | 7.50 |
| (6) | On the sixth cause of action, for that being double the amount of interest paid as set out in said cause of action.. | 112.00 |

In all for the sum of.....\$3686.02

And for their costs and disbursements in this behalf incurred.

R. W. JENNINGS,
Attorney for Plaintiffs.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

C. J. Stewart, being first duly sworn, on this oath deposes and says: That he is one of the plaintiffs in the within entitled action; that he has read the within amended complaint, knows the contents thereof and the same are true, as he verily believes.

C. J. STEWART.

Subscribed and sworn to before me this 18th day of November, 1909.

[Notary Seal] E. H. OSBORNE VAUDIN,
Notary Public for Alaska, Residing at Fairbanks,
Fourth Division.

Service of a copy of the within and foregoing and amended complaint received and accepted this 18 day of November, 1909.

WICKERSHAM, HEILIG & RODEN,
H.

Attorneys for Defendant.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart, Plaintiff, vs. Washington-Alaska Bank, Defendant. Amended Complaint. Filed in the District Court, Territory of Alaska, 4th Division. Nov. 18, 1909. E. H. Mack, Clerk. By G. F. Gates, Deputy. R. W. Jennings, Attorney for Plaintiffs.

[Title of Court and Cause.]

Demurrer to the Amended Complaint.

Comes now the defendant and demurs to the amended complaint herein upon the following ground: That several causes of action have been improperly united.

Defendant further demurs to the alleged first cause of action upon the ground that it does not state facts sufficient to constitute a cause of action; that several causes of action have been improperly united.

Defendant further demurs to the alleged second cause of action upon the ground that it does not state facts sufficient to constitute a cause of action; that several causes of action have been improperly united.

Defendant further demurs to the alleged third cause of action upon the ground that it does not state facts sufficient to constitute a cause of action; that several causes of action have been improperly united.

Defendant further demurs to the alleged fourth cause of action upon the ground that it does not state facts sufficient to constitute a cause of action; that several causes of action have been improperly united.

Defendant further demurs to the alleged fifth cause of action upon the ground that it does not state facts sufficient to constitute a cause of action; that several causes of action have been improperly united.

Defendant further demurs to the alleged sixth cause of action upon the ground that it does not state facts sufficient to constitute a cause of action; that several causes of action have been improperly united.

Fairbanks, Alaska, November 23, 1909.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendants.

Service by copy of the foregoing Demurrer admitted this 23rd day of November, 1909.

R. W. JENNINGS,

Attorney for Plaintiffs.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al. vs. Washington-Alaska Bank, a Corporation, Defendant. Demurrer to Amended Complaint. Filed in the District Court, Territory of Alaska, 4th Division, Nov. 23, 1909. E. H. Mack, Clerk. By G. F. Gates, Deputy. Wickersham, Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Order Overruling Demurrer to the Amended Complaint.

Now on this 26th day of November, 1909, the above-entitled cause was called for a hearing on defendant's Demurrer to the Amended Complaint filed in the above-entitled cause. Arguments of A. R. Heilig, of counsel for defendant, and of R. W. Jen-

nings, counsel for plaintiffs, were heard, at the conclusion of which, the Court being well advised;

It is ordered: That defendant's Demurrer to plaintiffs' Amended Complaint be and the same is now hereby overruled and five days' time is allowed in which defendant may file its Answer.

THOMAS R. LYONS,

District Judge.

Entered in Court Journal No. 9, page 582.

[Title of Court and Cause.]

Answer to the Amended Complaint.

Comes now the defendant and for answer to the first cause of action in the amended complaint herein says:

That neither the plaintiff C. J. Stewart nor the plaintiff C. M. Shaw are the real parties in interest in this action, but that the West Coast Grocery Company, a corporation organized and existing under the laws of the State of Washington with its principal place of business at Tacoma, Washington, is the real party in interest; that at some time prior to the filing of the amended complaint in this cause, the exact time being unknown to the defendant, the plaintiff C. J. Stewart, assigned, transferred and set over to the said West Coast Grocery Company all the right, title and claim to, and interest of the said C. J. Stewart in said first cause of action and the proceeds thereof and any and all such judgment as might be recovered in said action and such money as might be collected thereon; that the said C. J. Stewart is so largely indebted that he is insolvent, and

that all his assets together with the total amount claimed in said amended complaint will not pay all his debts and liabilities to the said West Coast Grocery Company and to his other creditors, and the said C. J. Stewart has no interest whatever in said first cause of action; that this action has been brought at the instance of and on behalf of said West Coast Grocery Company in the name of plaintiffs to avoid the defense; that said cause of action is not assignable and with the distinct understanding and agreement between plaintiffs and said West Coast Grocery Company that said West Coast Grocery Company would pay all costs and expenses and attorney's fees, and said plaintiffs shall not be held in any way responsible for costs, expenses or attorney's fees or any judgment for costs that may be rendered against them in this action, and said West Coast Grocery Company has employed the attorney prosecuting the same at its own expense, and has advanced all necessary costs and expenses for the prosecution thereof, and said West Coast Grocery Company is the exclusive beneficiary in the first cause of action and the only and real party in interest therein. That the plaintiffs herein have no interest whatsoever in the subject matter of said cause of action nor any interest in or to any judgment that may be recovered against the defendant herein, but that the same and the whole thereof is for the benefit of said West Coast Grocery Company.

For answer to the second cause of action in said amended complaint defendant says:

That neither the plaintiff C. J. Stewart nor the plaintiff C. M. Shaw are the real parties in interest

in this action but that the West Coast Grocery Company, a corporation organized and existing under the laws of the State of Washington with its principal place of business at Tacoma, Washington, is the real party in interest; that at some time prior to the filing of the amended complaint in this cause, the exact time being unknown to the defendant, the plaintiff C. J. Stewart, assigned, transferred and set over to the said West Coast Grocery Company all the right, title and claim to, and interest of the said C. J. Stewart in said second cause of action and the proceeds thereof and any and all such judgment as might be recovered in said action and such money as might be collected thereon; that the said C. J. Stewart is so largely indebted that he is insolvent, and that all his assets together with the total amount claimed in said amended complaint will not pay all his debts and liabilities to the said West Coast Grocery Company and to his other creditors, and the said C. J. Stewart has no interest whatever in said first cause of action; that this action has been brought at the instance of and on behalf of said West Coast Grocery Company in the name of plaintiffs to avoid the defense that said cause of action is not assignable, and with the distinct understanding and agreement between plaintiffs and said West Coast Grocery Company that said West Coast Grocery Company would pay all costs and expenses and attorney's fees and said plaintiffs shall not be held in any way responsible for costs, expenses or attorney's fees or any judgment for costs that may be rendered against them in this action, and said West Coast

Grocery Company has employed the attorney prosecuting the same at its own expense, and has advanced all necessary costs and expenses for the prosecution thereof, and said West Coast Grocery Company is the exclusive beneficiary in the second cause of action and the only and real party in interest therein. That the plaintiffs herein have no interest whatsoever in the subject matter of said cause of action nor any interest in or to any judgment that may be recovered against the defendant herein, but that the same and the whole thereof is for the benefit of said West Coast Grocery Company.

For answer to the third cause of action in said amended complaint defendant says:

That neither the plaintiff C. J. Stewart nor the plaintiff C. M. Shaw are the real parties in interest in this action, but that the West Coast Grocery Company, a corporation organized and existing under the laws of the State of Washington with its principal place of business at Tacoma, Washington, is the real party in interest; that at some time prior to the filing of the amended complaint in this cause, the exact time being unknown to the defendant, the plaintiff C. J. Stewart, assigned, transferred and set over to the said West Coast Grocery Company all the right, title and claim to, and interest of the said C. J. Stewart in said third cause of action, and the proceeds thereof, and any and all such judgment as might be recovered in said action and such company as might be collected thereon; that the said C. J. Stewart is so largely indebted that he is insolvent and that all his assets, together

with the total amount claimed in said amended complaint, will not pay all the debts and liabilities to the said West Coast Grocery Company and to his other creditors, and the said C. J. Stewart has no interest whatever in said third cause of action; that this action has been brought at the instance of and on behalf of said West Coast Grocery Company in the name of plaintiffs to avoid the defense that said cause of action is not assignable and with the distinct understanding and agreement between plaintiffs and said West Coast Grocery Company that said West Coast Grocery Company would pay all costs and expenses and attorney's fees, and said plaintiffs shall not be held in any way responsible for costs, expenses or attorney's fees or any judgment for costs that may be rendered against them in this action, and said West Coast Grocery Company has employed the attorney prosecuting the same at its own expense and has advanced all necessary costs and expenses for the prosecution thereof, and said West Coast Grocery Company is the exclusive beneficiary in the said third cause of action and the only and real party in interest therein. That the plaintiffs herein have no interest whatsoever in the subject matter of said cause of action nor any interest in or to any judgment that may be recovered against the defendant herein, but that the same and the whole thereof is for the benefit of said West Coast Grocery Company.

For answer to the fourth cause of action in said amended complaint, defendant says:

That neither the plaintiff C. J. Stewart nor the

plaintiff C. M. Shaw are the real parties in interest in this action but that the West Coast Grocery Company, a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Tacoma, Washington, is the real party in interest; that at some time prior to the filing of the amended complaint in this cause, the exact time being unknown to the defendant, the plaintiff C. J. Stewart, assigned, transferred and set over to the said West Coast Grocery Company all the right, title and claim to, and interest of the said C. J. Stewart in said fourth cause of action and the proceeds thereof and any and all such judgment as might be recovered in said action and such money as might be collected thereon; that the said C. J. Stewart is so largely indebted that he is insolvent and that all his assets, together with the total amount claimed in said amended complaint, will not pay all his debts and liabilities to the said West Coast Grocery Company and to his other creditors, and the said C. J. Stewart has no interest whatever in said fourth cause of action; that this action has been brought at the instance of and on behalf of said West Coast Grocery Company in the name of plaintiffs to avoid the defense that said cause of action is not assignable and with the distinct understanding and agreement between plaintiffs and said West Coast Grocery Company that said West Coast Grocery Company would pay all costs and expenses and attorney's fees and said plaintiffs shall not be held in any way responsible for costs, expenses or attorney's fees or any judgment for costs that may be

rendered against him in this action, and said West Coast Grocery Company has employed the attorney prosecuting the same at its own expense and has advanced all necessary costs and expenses for the prosecution thereof and said West Coast Grocery Company is the exclusive beneficiary in the said fourth cause of action and the only and real party in interest therein. That the plaintiffs herein have no interest whatsoever in the subject matter of said cause of action nor any interest in or to any judgment that may be recovered against the defendant herein, and that the same and the whole thereof is for the benefit of said West Coast Grocery Company.

For answer to the fifth cause of action in said amended complaint defendant says:

That neither the plaintiff C. J. Stewart nor the plaintiff C. M. Shaw are the real parties in interest in this action, but that the West Coast Grocery Company, a corporation organized and existing under the laws of the State of Washington, with its principal place of business at Tacoma, Washington, is the real party in interest; that at some time prior to the filing of the amended complaint in this cause, the exact time being unknown to the defendant, the plaintiff C. J. Stewart, assigned, transferred and set over to the said West Coast Grocery Company all the right, title and claim to, and interest of the said C. J. Stewart in said first cause of action and the proceeds thereof and any and all such judgment as might be recovered in said action and such money as might be collected thereon; that the said C. J. Stewart is so largely indebted that he is

insolvent and that all his assets, together with the total amount claimed in said amended complaint, will not pay all his debts and liabilities to the said West Coast Grocery Company and to his other creditors, and the said C. J. Stewart has no interest whatever in said fifth cause of action; that this action has been brought at the instance of and on behalf of said West Coast Grocery Company in the name of plaintiffs to avoid the defense that said cause of action is not assignable and with the distinct understanding and agreement between plaintiffs and said West Coast Grocery Company that said West Coast Grocery Company would pay all costs and expenses and attorney's fees and said plaintiffs shall not be held in any way responsible for costs, expenses or attorney's fees or any judgment for costs that may be rendered against them in this action, and said West Coast Grocery Company has employed the attorney prosecuting the same at its own expense and has advanced all necessary costs and expenses for the prosecution thereof, and said West Coast Grocery Company is the exclusive beneficiary in the fifth cause of action and the only and real party in interest therein. That the plaintiffs herein have no interest whatsoever in the subject matter of said cause of action nor any interest in or to any judgment that may be recovered against the defendant herein, but that the same and the whole thereof is for the benefit of said West Coast Grocery Company.

For answer to the sixth cause of action in said amended complaint defendant says:

That neither the plaintiff C. J. Stewart nor the

plaintiff C. M. Shaw are the real parties in interest in this action but that the West Coast Grocery Company, a corporation organized and existing under the laws of the State of Washington with its principal place of business at Tacoma, Washington, is the real party in interest; that at some time prior to the filing of the amended complaint in this action, the exact time being unknown to the defendant, the plaintiff C. J. Stewart, assigned, transferred and set over to the said West Coast Grocery Company, all the right title and claim to, and interest of the said C. J. Stewart in said sixth cause of action and the proceeds thereof and any and all such judgment as might be recovered in said action and such money as might be collected thereon; that the said C. J. Stewart is so largely indebted that he is insolvent and that all his assets, together with the total amount claimed in said amended complaint, will not pay all his debts and liabilities to the said West Coast Grocery Company and to his other creditors, and the said C. J. Stewart has no interest whatever in said first cause of action; that this action has been brought at the instance of and on behalf of said West Coast Grocery Company in the name of plaintiffs to avoid the defense that said cause of action is not assignable and with the distinct understanding and agreement between plaintiff, and said West Coast Grocery Company that said West Coast Grocery Company would pay all costs and expenses and attorney's fees and said plaintiffs shall not be held in any way responsible for costs, expenses or attorney's fees or any judgment

for costs that may be rendered against them in this action, and said West Coast Grocery Company has employed the attorney prosecuting the same at its own expense and has advanced all necessary costs and expenses for the prosecution thereof and said West Coast Grocery Company is the exclusive beneficiary in the said sixth cause of action and the only and real party in interest therein. That the plaintiffs herein have no interest whatsoever in the subject matter of said cause of action nor any interest in or to any judgment that may be rendered against the defendant herein, and that the same and the whole thereof is for the benefit of said West Coast Grocery Company.

Wherefore defendant prays that plaintiffs take nothing by their action and that the defendant have judgment for its costs and disbursements herein.

Fairbanks, Alaska, December 2, 1909.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendant.

Territory of Alaska,
Fairbanks Precinct,—ss.

Before me, the undersigned authority, personally appeared G. B. Wesch, who, being first duly sworn, deposes and says: That he is the cashier of the Washington-Alaska Bank, the corporation named in the foregoing answer as defendant; that he has read the foregoing answer and that he believes the allegations therein contained to be true.

GEO. B. WESCH.

Subscribed and sworn to before me this 2d day of December, 1909.

[Seal]

ALBERT R. HEILIG,

Notary Public in and for Alaska.

Service by copy of the foregoing answer to amended complaint admitted this 2d day of December, 1909.

R. W. JENNINGS,

Attorney for Plaintiffs.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart and C. M. Shaw, Plaintiff, vs. Washington-Alaska Bank, a Corporation, Defendant. Answer to Amended Complaint. Filed in the District Court, Territory of Alaska, 4th Div. Dec. 2, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy. James Wickersham, Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Motion to Strike Answer and for Judgment.

Comes now plaintiffs in the above-entitled cause and move the Court to strike from the records and files of this cause to Answer filed herein, on the 2d day of December, 1909, to the Amended Complaint, and to render Judgment herein in favor of plaintiffs and against defendants, for the amount prayed for in said amended complaint, for the reason that said answer is sham and frivolous, and raises no issue and is not interposed in good faith, but is interposed solely for the purpose of delay, and for the purpose

of harassing, vexing and annoying plaintiffs, and delaying the entry of Judgment to which defendant is well aware plaintiffs are entitled.

This motion is based on the records and files of this case, and on the affidavit of C. J. Stewart, plaintiff herein.

R. W. JENNINGS,
Attorney for Plaintiffs.

[Endorsements]: Filed in the District Court, Territory of Alaska, Fourth Division. December 3, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy.

[Title of Court and Cause.]

Affidavit of C. J. Stewart.

United States of America,
Territory of Alaska,—ss.

C. J. Stewart, being sworn, says: I am one of the plaintiffs in this action. Said action was begun by me as sole plaintiff, by filing a complaint and issuing summons herein on September 22, 1909. Said summons was served on defendant on same day. Said action was and is one to recover usurious interest paid by me to defendant at divers and sundry times and on six separate notes. In order to avoid the annoyance and expense of a separate action for each payment of the several items of interest, the several causes of action were joined and one action for each payment of the several items of interest, the several causes of action were joined and one action brought for all said payments.

Defendant made no appearance whatsoever in said action until 3:30 o'clock P. M. of October 22, 1909; at which time it filed a demurrer alleging as grounds thereof:

1. That this court had no jurisdiction of the subject matter.

2. That the complaint did not state facts sufficient to constitute a cause of action.

3. That two or more causes of action were improperly united.

Said demurrer came on to be heard on November 2, 1909, and at that time was by this Court overruled. Defendant then asked for twenty days in which to answer, alleging that it wished to hear from its manager, W. H. Parsons, who was in the States. The Court refused to allow twenty days in which to answer but did allow ten days in which to answer. On the last of the ten days so allowed, defendant filed its answer, which said answer denied none of the allegations of the complaint, but alleged only that C. M. Shaw was the real party in interest by virtue of an assignment of the cause of action from me to said Shaw, alleged to have been made August 7, 1909.

On the service on me, on November 11, 1909, of said answer, I immediately filed my affidavit herein and served it upon defendant and in said affidavit I alleged that on said August 7, 1909, I had made an assignment of all my property to said Shaw for the benefit of my creditors and that I was in doubt whether said assignment was effectual in law to convey said cause of action. And said affidavit was also an application to this court that the name of said

Shaw be added as a party plaintiff, and attached to said affidavit and application was the statement of said Shaw that he was willing to be concluded by the judgment in this action, and application of said Shaw to be made a party plaintiff.

Said application or petitions came on to be heard by this court on the 18th day of November, 1909, and defendant strenuously resisted same, but this Court allowed an amended complaint to be filed in which said Shaw was added as a party plaintiff and defendant was allowed five days from the date of service upon it of said amended complaint wherein to plead to said amended complaint.

Said defendant, on the last of said five days, filed a demurrer to said amended complaint on the same grounds as those urged against the original complaint, notwithstanding the fact that said amended complaint in no wise substantially differed from the original complaint.

Said demurrer came on to be heard on the 26th day of November, 1909, and at said hearing defendant did not even argue same, and said demurrer was by this court promptly overruled. Defendant then asked for and obtained leave to file an answer within five days.

On the day after the last of said five days, defendant filed its answer to said amended complaint wherein it alleged that neither myself nor said Shaw was the real party in interest, but that the West Coast Grocery Company, one of my creditors, is the real party in interest.

In neither of said answers is any of the facts al-

leged in the complaint denied. I have in my possession the original notes which I executed for the money mentioned in the complaint. Said notes on their face state that they bear interest at the rate of two per cent per month and on the reverse side of said notes is noted the payments of principal and interest—all in the handwriting of defendant's proper officer or the official stamp of the said defendant.

Defendant cannot deny any of the matters and things alleged in said complaint, or said amended complaint, without committing rank perjury and rendering the maker of said denial amenable to the criminal law. Defendant is well aware of all the facts in this affidavit mentioned. I am informed that said defendant is negotiating a sale of all its property and is seeking to effect same before I can obtain a judgment. That a judgment obtained against defendant after said transfer is actually accomplished would be worthless for any purpose and defendant raises these sham, feigned and frivolous defenses for the sole purpose of precipitating an issue which will necessitate a trial and defer the rendition of a judgment until after such transfer be effected.

Said answer to said amended complaint is sham, in that same is false, as shown by the record in this cause; and is frivolous and that it presents no real issue and the facts therein set forth cannot be so stated as to raise a real issue; and said answer is interposed in bad faith and solely for the purpose of

delay. Said answer is false in each and every particular save the allegation of my insolvency.

C. J. STEWART.

Subscribed and sworn to before me this 3d day of December, 1909.

[Notary Seal]

ESTELLE FITT,

Notary Public in and for the Territory of Alaska.

To Washington-Alaska Bank, the Above-named Defendant, and to Messrs. Wickersham, Heilig & Roden, Its Attorneys:

Take notice that on Saturday, December 4, 1909, at the courthouse in Fairbanks, and at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, I will call up for determination by the Court the foregoing motion.

R. W. JENNINGS,

Attorney for Plaintiffs.

Copy received and service accepted, this 3d day of December, 1909.

WICKERSHAM, HEILIG & RODEN,

Attorneys for Defendant.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart and C. M. Shaw vs. Washington Alaska Bank. Motion to Strike and for Judgment, and Affidavit of C. J. Stewart. Original. Filed in the District Court, Territory of Alaska, 4th Division, December 3, 1909. E. H. Mack, Clerk. By G. F. Gates, Deputy. R. W. Jennings, Attorney for Plaintiffs.

[Title of Court and Cause.]

Motion to Strike Affidavit of C. J. Stewart.

Comes now the defendant and moves the Court to strike from the records and files in this case the affidavit of C. J. Stewart attached to the motion of plaintiffs to strike from the records and files in this case the answer of the defendant to the amended complaint herein, upon the grounds that the said affidavit cannot properly be considered by the Court upon said motion, and that said affidavit is not a proper and legal part of said motion, and that the filing thereof is an attempt to bring about a termination of the merits of the issue made by the answer of the defendant to the amended complaint herein upon the affidavit of the said C. J. Stewart.

Fairbanks, Alaska, December 8, 1909.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendant.

Service by copy of the foregoing motion admitted this 8 day of December, 1909.

R. W. JENNINGS,

Attorney for Plaintiffs.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart and C. M. Shaw, Plaintiff, vs. Washington Bank, Defendant. Motion to Strike Affidavit of C. J. Stewart. Filed in Open Court Dec. 8, 1909. Dist. Court, Ter. Alaska, 4th Div. E. H. Mack, Clerk. By E. A. Henderson, Deputy. James Wickersham, Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Order Overruling Motion for Leave to Amend Answer to Amended Complaint.

This action being before the Court upon motion of plaintiffs to strike from the records and files in this cause the answer filed herein on December 2, 1909, and for judgment, the defendant, in open court, while the Court is ruling on said motion, moves the court for leave to file an amended answer to the amended complaint and to amend its answer to the amended complaint in this particular, to wit: By adding to each answer to the six several causes of action set forth in the amended complaint the following allegation: "That said C. M. Shaw is and at all times mentioned in said amended complaint was the agent and employee of said West Coast Grocery Company."

Which motion the Court, upon due consideration, overruled, to which ruling of the Court the defendant duly excepted and an exception is allowed.

THOMAS R. LYONS,

District Judge.

[Endorsements]: Entered in Court Journal No. 9, page 636.

[Title of Court and Cause.]

Order Overruling Defendant's Motion to Strike Affidavit of C. J. Stewart.

Now, on this 15th day of December, 1909, the Court having heretofore heard arguments of counsel and

having had under advisement defendant's motion to strike the affidavit of C. J. Stewart, attached to plaintiff's motion to strike defendant's answer to amended complaint, filed by plaintiffs herein, and being now well advised,

It is ordered that defendant's said motion to strike the affidavit of C. J. Stewart be and the same is now hereby denied and overruled. To which ruling defendant excepts and the exception is allowed.

THOMAS R. LYONS,
District Judge.

[Endorsements]: Entered in Court Journal No. 9, page 636.

[Title of Court and Cause.]

Order Sustaining Plaintiff's Motion to Strike Defendant's Answer and for Judgment.

Now, on this 15th day of December, 1909, arguments having heretofore been heard, and the Court having had under advisement plaintiff's motion to strike defendant's Answer to the amended Complaint herein, and also plaintiff's motion for Judgment embodied therein, and being now well advised:

It is ordered: That plaintiff's said motion to strike defendant's answer and for Judgment be and the same is now hereby sustained. To which ruling defendant excepts, and the exception is allowed.

THOMAS R. LYONS,
District Judge.

[Endorsements]: Entered in Court Journal No. 9, at page 636.

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

No. 1350.

C. J. STEWART and C. M. SHAW,
Plaintiffs,

vs.

WASHINGTON-ALASKA BANK (a Corpora-
tion),
Defendant.

Judgment.

This cause came on to be heard on the motion of plaintiffs that the answer of the defendant to the amended complaint herein be stricken out as sham and frivolous and for judgment against defendant as prayed for in the amended complaint; the matter was fully argued by the attorneys for respective parties hereto, and the Court took the same under advisement; and now on this 15th day of December, 1909, the Court being fully advised in the premises, renders its decision and doth sustain said motion, which said decision is made in open court and in the presence of the attorneys for both parties hereto.

Wherefore, by reason of the law and the premises, it is

ORDERED, ADJUDGED AND DECREED:
That plaintiffs do have and recover of and from the defendant the sum of Three Thousand Six Hundred Eighty-six and 2/100 Dollars (\$3,686.02) besides

their costs and disbursements herein to be taxed. Defendant excepts.

Done in open court at Fairbanks, Alaska, December 15, 1909.

By the Court,

THOMAS R. LYONS,

Judge.

Entered in Court Journal No. 9, page 640.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. Stewart et al. vs. Washington-Alaska Bank. Judgment.

[Title of Court and Cause.]

Assignment of Errors.

Comes now the defendant in the above-entitled cause, being the plaintiff in error, and assigns the following errors as having been committed by the above-entitled court on the trial of the above-entitled action, which errors the said defendant intends to and does reply upon on its writ of error to be presented to the United States Circuit Court of Appeals for the Ninth Circuit.

1. The Court erred in overruling defendant's Demurrer to the original complaint.

2. The Court erred in overruling defendant's objection to the motion of plaintiff to amend his original complaint.

3. The Court erred in allowing the filing of plaintiff's amended complaint.

4. The Court erred in overruling defendant's demurrer to the Amended Complaint.

5. The court erred in sustaining plaintiff's motion to strike from the records and files defendant's answer to the amended complaint.

6. The Court erred in overruling defendant's motion to strike from the records and files the affidavit of C. J. Stewart attached to plaintiff's motion to strike defendant's Amended Answer.

7. The Court erred in overruling defendant's motion to amend its answer to the amended complaint.

8. The Court erred in sustaining plaintiff's motion for judgment.

9. The Court erred in making and entering judgment in favor of plaintiffs and against the defendant in the sum of \$3,686.02, and their costs and disbursements.

Wherefore the defendant prays that the judgment in the above-entitled action may be reversed and that it be restored to all things which it has lost thereby.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendant.

Service accepted December 29, 1909.

R. W. JENNINGS,

Attorney for Plaintiffs.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Assignment of Error. Filed in the District Court, Territory of Alaska, 4th Division. Dec. 29, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy. Wickersham, Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Petition for Writ of Error.

The Washington-Alaska Bank, defendant in the above-entitled cause, feeling itself aggrieved by the judgment made and entered in the above-entitled court and cause on the 15th day of December, 1909, comes now by Messrs. Wickersham, Heilig & Roden, its attorneys, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of such writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

WICKERSHAM, HEILIG & RODEN,
H.

Attorneys for Defendant.

Service of the foregoing petition for writ of error and order is hereby admitted at Fairbanks, Alaska, this 29th day of December, 1909.

R. W. JENNINGS,
Attorney for Plaintiffs.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiff, vs. Washington-Alaska Bank, Defendant. Petition for Writ of Error. Filed in the District Court Territory of Alaska, 4th Division. Dec. 29, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy.

[Title of Court and Cause.]

Order Allowing Writ of Error, etc.

Upon motion of Messrs. Wickersham, Heilig & Roden, attorneys for the defendant, and the filing of a petition for a writ of error and assignment of errors,

It is ordered: That a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein, and that the amount of bond on said writ of error be and hereby is fixed at Five Thousand Dollars.

Dated December 29, 1909.

THOMAS R. LYONS,
District Judge.

Entered in Court Journal No. 9, page 658.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiff, vs. Washington-Alaska Bank, Defendant. Order Allowing Writ of Error, etc. Filed in the District Court Territory of Alaska, 4th Division. Dec. 29, 1909. E. H. Mack, Clerk.

By E. A. Henderson, Deputy. Wickersham, Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Writ of Error [Original].

United States of America,—ss.

The President of the United States of America, to the Honorable THOMAS R. LYONS, Judge of the United States District Court for the Fourth Division of the Territory of Alaska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court for the Fourth Division of the Territory of Alaska, before you, between C. J. Stewart and C. M. Shaw, plaintiffs, and Washington-Alaska Bank, defendants, a manifest error has happened to the great prejudice and damage of the said defendant, said Washington-Alaska Bank, as is said and appears by the petition herein.

We, being willing that error, if any hath been made, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justice of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, together with this writ, so as to have the same at the said place in said circuit on the 28th day of January, 1910, that the records and proceedings

aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this the 29th day of December, 1909.

[Seal]

E. H. MACK,

Clerk of the District Court for the Fourth Division of the Territory of Alaska.

Allowed this 29th day of December, 1909.

THOMAS R. LYONS,

Judge of the District Court for the Fourth Division of the District of Alaska.

Service of the within and foregoing writ of error by receipt of a copy thereof is hereby admitted at Fairbanks, Alaska, this 29th day of December, 1909.

R. W. JENNINGS,

Attorney for Plaintiffs.

[Endorsed]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Writ of Error.

[Title of Court and Cause.]

Order Relative to Supersedeas Bond on Writ of Error.

The defendant, Washington-Alaska Bank, having this day filed its petition for a writ of error from the judgment made and entered herein to the United

States Circuit Court of Appeals, for the Ninth Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings of this court be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals for the Ninth Circuit, and said petition having this day been allowed.

Now, therefore, it is ordered: That upon the defendant above named filing with the clerk of this Court a good and sufficient bond in the sum of Five Thousand Dollars, to the effect that if the said defendant and plaintiff in error shall prosecute said writ of error to effect and answer all damages and costs if it fails to make its plea good then the said obligation to be void, else to remain in full force and virtue, the said bond to be approved by this Court—that all further proceedings in this court be and they are hereby suspended and stayed until the determination of said writ of error by the said Circuit Court of Appeals.

Dated this 29th day of December, 1909.

THOMAS R. LYONS,
District Judge.

[Endorsements]: Entered in Court Journal No. 9, page 658. No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Order Relative to Supersedeas Bond on Writ of Error. Filed in the District Court,

Territory of Alaska, 4th Division. Dec. 29, 1909.
E. H. Mack, Clerk. By E. A. Henderson, Deputy.
Wickersham, Heilig & Roden, Attorneys for Defendants.

[Title of Court and Cause.]

Bond on Writ of Error.

Know All Men by These Presents: That we, the Washington-Alaska Bank, a corporation, as principal, and F. S. McFarline and R. C. Wood, both residents of the town of Fairbanks, Territory of Alaska, as sureties, are held and firmly bound unto C. J. Stewart and C. M. Shaw, the plaintiffs above named, in the sum of Five Thousand Dollars, to be paid to the plaintiffs, their executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, and each of us, and our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our hands and seals and dated this 29th day of December, One Thousand Nine Hundred and Nine.

Whereas, on the 15th day of December, 1909, in the District Court in and for the Fourth Division of the Territory of Alaska, in a suit pending in said court between C. J. Stewart and C. M. Shaw, as plaintiffs, and the Washington-Alaska Bank, as defendant, a judgment was rendered against the said Washington-Alaska Bank, defendant, and said defendant has sued out a writ of error from said District Court to

the Circuit Court of Appeals for the Ninth Circuit to reverse said judgment, and has procured the issuance of a citation directed to the said C. J. Stewart and C. M. Shaw, citing and admonishing them to be and appear at a session of said United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California, on the 28th day of January, 1910; and

Whereas plaintiff in error desires a stay of execution in the above-entitled action pending the above appeal.

Now, therefore, the condition of the above obligation is such that if the above-named defendant Washington-Alaska Bank shall prosecute said writ of error to effect and answer and pay all judgments, damages, and costs if it fail to make its plea good then this obligation shall be void; otherwise to remain in full force and virtue.

WASHINGTON-ALASKA BANK. [Seal]

By GEO. B. WESCH,
Cashier.

F. S. McFARLINE. [Seal]

R. C. WOOD. [Seal]

Sealed and delivered in the presence of:

H. H. REEVES.

A. F. HERPICK, Jr.

United States of America,
Territory of Alaska,—ss.

F. S. McFarline and R. C. Wood being first duly sworn, each for himself and not one for the other, doth depose and say: That he is one of the sureties

on the within and foregoing appeal and supersedeas bond; that he is a resident within the District of Alaska; that he is not an attorney or counselor at law, marshal, deputy marshal, commissioner, clerk of the court, or other officer of any court, and that he is worth the amount specified in the foregoing bond over and above all debts and liabilities and exclusive of property exempt from execution.

F. S. McFARLINE.

R. C. WOOD.

Subscribed and sworn to before me this 29th day of December, 1909.

[Notary Seal] ALBERT R. HEILIG,
Notary Public in and for the District of Alaska.

The above bond is hereby approved this 29th day of December, 1909.

THOMAS R. LYONS,

District Judge.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Bond on Writ of Error. Filed in the District Court, Territory of Alaska, 4th Division, Dec. 29, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy. Wickersham, Heilig & Roden, Attorney for Defendant.

[Title of Court and Cause.]

Citation [on Writ of Error (Original)].

United States of America,—ss.

The President of the United States of America to
C. J. Stewart, C. M. Shaw, and to R. W. Jen-
nings, Their Attorney, Greeting:

You are hereby cited and admonished to appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ pursuant to a writ of error filed in the office of the clerk of the District Court for the Fourth Division of the Territory of Alaska, wherein C. J. Stewart and C. M. Shaw are defendants in error and the Washington-Alaska Bank is plaintiff in error, and show cause if any there be why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in error in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 29th day of December, 1909.

THOMAS R. LYONS,

District Judge, Presiding in the District Court for
the Fourth Division of the Territory of Alaska.

Service of the foregoing citation is hereby admitted by receipt of a copy thereof this 29th day of December, 1909.

R. W. JENNINGS,

Attorney for Plaintiffs.

[Endorsed]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Citation.

[Title of Court and Cause.]

Order Extending Time to Perfect Appeal.

On this 29th day of December, 1909, the above-entitled cause came on to be heard before the Judge of the above-entitled court upon the application of the defendant herein for an order extending the return day, the parties appearing by their respective attorneys, and it appearing to the Court that it is necessary, owing to the great distance from Fairbanks to San Francisco, California, and the slow and uncertain communication between said point, that an order extending the time in which to docket said cause and to file the record therein by the clerk of the United States Circuit Court of Appeals for the Ninth Circuit should be extended until the 21 day of February, 1910, and the Court being fully advised in the premises, and believing good cause exists therefor—

It is hereby ordered that the time within which the said appellant shall perfect said case on appeal and file the record thereof and docket said cause with the clerk of said Circuit Court of Appeals be and the same is hereby enlarged and extended to and including the 21 day of February, 1910.

THOMAS R. LYONS,

District Judge.

Entered in Court Journal No. 9, page 658.

[Endorsed]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Order Extending Time to Perfect Appeal. Filed in the District Court, Territory of Alaska, 4th Div., Dec. 29, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy.

[Title of Court and Cause.]

Stipulation Relative to Printing of Record.

It is hereby stipulated and agreed that in the printing of the record herein for the consideration of the Circuit Court of Appeals that the title of the court and cause in full on all papers shall be omitted, excepting the first page, inserting in place and stead thereof "Title of Court and Cause."

Dated this 29th day of December, 1909.

R. W. JENNINGS,

Attorney for Plaintiffs.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendant.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Stipulation Relative to Printing of Record. Filed in the District Court, Territory of Alaska, 4th Div., Dec. 29, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy. James Wickersham, Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare the transcript or record in this case to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the writ of error heretofore perfected to said court, and include in said transcript the papers included in the stipulation entered into between the plaintiffs and defendant by and through their respective attorneys in this case, namely:

1. Original complaint;
2. Demurrer to original complaint;
3. Order overruling demurrer to original complaint;
4. Answer to original complaint;
- 4½. Motion and affidavit for leave to file amended complaint.
5. Objection to motion of plaintiffs to file amended complaint;
6. Order allowing filing of amended complaint;
7. Amended complaint;
8. Demurrer to amended complaint;
9. Order overruling demurrer to amended complaint;
10. Answer to amended complaint;
11. Motion to strike defendant's answer from the records and files and for judgment with affidavit of C. J. Stewart and C. M. Shaw, attached;
12. Defendant's motion to strike affidavit of C. J. Stewart attached to plaintiff's motion to strike;

13. Order overruling defendant's motion for leave to amend answer to amended complaint;
14. Order overruling defendant's motion to strike affidavit of C. J. Stewart;
15. Order sustaining plaintiffs' motion to strike defendant's answer and for judgment;
16. Judgment;
17. Assignment of errors;
18. Petition for writ of error;
19. Order allowing writ of error;
20. Bond;
21. Citation and admission of service thereon;
22. Order of supersedeas;
23. Order extending return day;
24. Stipulation for printing of transcript;
25. Praeceptum for transcript;
26. Stipulation as to making up of record.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the 21 day of February, 1910.

WICKERSHAM, HEILIG & RODEN,
H.

Attorneys for Plaintiff in Error.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Praeceptum for Transcript of Record. Filed in the District Court, Territory of

Alaska, 4th Div., Dec. 29, 1909. E. H. Mack, Clerk.
By E. A. Henderson, Deputy. James Wickersham,
Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Stipulation as to Making up Record.

It is hereby stipulated between the plaintiffs and defendant by and through their respective attorneys that the transcript of the record on appeal in the above-entitled cause shall be made up of the following papers:

1. The original complaint;
2. Demurrer to original complaint;
3. Order overruling demurrer to original complaint;
4. Answer to original complaint;
5. Motion and affidavit for leave to file amended complaint;
6. Defendant's objections to motion to file amended complaint;
7. Order allowing filing of amended complaint;
8. Amended complaint;
9. Demurrer to amended complaint;
10. Order overruling demurrer to amended complaint;
11. Answer to amended complaint;
12. Motion to strike defendant's answer from the records and files and for judgment and affidavit of C. J. Stewart and C. M. Shaw, attached;
13. Defendant's motion to strike affidavit of C. J. Stewart attached to plaintiff's motion to strike;

14. Order overruling defendant's motion for leave to amend answer to amended complaint;
15. Order overruling defendant's motion to strike affidavit of C. J. Stewart;
16. Order sustaining plaintiff's motion to strike defendant's answer and for judgment;
17. Judgment;
18. Assignment of error;
19. Petition for writ of error;
20. Order allowing writ of error;
21. Supersedeas order;
22. Bond;
23. Citation and admission of service thereon;
24. Order extending return day;
25. Stipulation for printing transcript;
26. Praecipe for transcript;
27. This stipulation for the making of the record.

R. W. JENNINGS,

Attorney for Plaintiffs.

WICKERSHAM, HEILIG & RODEN,

H.

Attorneys for Defendant.

[Endorsements]: No. 1350. In the District Court for the Territory of Alaska, Fourth Division. C. J. Stewart et al., Plaintiffs, vs. Washington-Alaska Bank, Defendant. Stipulation as to Making up Record. Filed in the District Court, Territory of Alaska, 4th Div., Dec. 29, 1909. E. H. Mack, Clerk. By E. A. Henderson, Deputy. James Wickersham, Heilig & Roden, Attorneys for Defendant.

[Title of Court and Cause.]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, E. H. Mack, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the above and foregoing typewritten pages numbered one to eighty, inclusive, constitute a full, true and complete copy and the whole thereof, including the endorsements thereon, of the pleadings, motions, affidavits and all papers in the record required by the Rules of Court and the praecipe filed in this court, commanding the preparation of the record on appeal in the above-entitled cause.

I do further certify that the cost of preparing this record was Forty-eight Dollars and Ninety Cents (\$48.90), and that the same has been paid by the plaintiff in error.

In witness whereof, I have hereunto set my hand and affixed the seal of the Court, at Fairbanks, Alaska, this 5th day of January, A. D. 1910.

[Seal] E. H. MACK,
Clerk of the District Court, Territory of Alaska,
Fourth Division.

By E. A. Henderson,
Deputy.

[Endorsed]: No. 1818. United States Circuit Court of Appeals for the Ninth Circuit. The Washington-Alaska Bank, a Corporation, Plaintiff in Error, vs. C. J. Stewart and C. M. Shaw, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court for the Territory of Alaska, Fourth Division.

Filed February 3, 1910.

F. D. MONCKTON,
Clerk.

